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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SUSHOVAN HUSSAIN,

Defendant.

Case No. 3:16-cr-00462 CRB

NOTICE OF MOTION AND MOTION TO
QUASH SUBPOENA ISSUED TO NON-PARTY
HEWLETT-PACKARD COMPANY PURSUANT
TO RULE 17(C); MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF

Date: August 30, 2017
Time: 1:30 p.m.
Place: Courtroom 6, 17th Floor
Judge: Hon. Charles R. Breyer

Date Filed: November 10, 2016
Trial Date: February 26, 2018

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on August 30, 2017 at 1:30 p.m., or as soon thereafter as the matter may be heard by the above-referenced Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, Courtroom 6, Hewlett-Packard Enterprise and Hewlett-Packard Company will and hereby do move this Court pursuant to the Federal Rule of Criminal Procedure 17(c)(2) for an order quashing Defendant Sushovan Hussain's subpoena issued to non-party Hewlett-Packard Company pursuant to Federal Rule of Criminal Procedure 17(c).

The Motion to Quash is based upon this Notice of Motion and Motion, the following Memorandum of Points and Authorities (including the attached Appendix), the Declaration of Susan D. Resley in support of this Motion and accompanying Exhibits, the reply to be filed in support of this Motion, oral argument of counsel at the hearing, all pleadings and papers on file in this action, and any other matters the Court may properly consider by judicial notice or otherwise.

1 Dated: August 9, 2017

Respectfully submitted,

2
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT (STANDING ORDER NO. 5)

Courts have made unmistakably clear that Rule 17(c) does not warrant the issuance of sweeping subpoenas. Nonetheless, the Defendant in this case has served on Hewlett-Packard Company (“HP”) a subpoena with a broad scope that more closely resembles a civil discovery subpoena than the more narrowly-tailored subpoena contemplated for criminal trials. The Defendant already possesses much of the information he requests, and any remaining information requests fall short of the relevancy, admissibility, and specificity requirements under Rule 17. As such, this Court should quash the subpoena.

In November 2016, a federal grand jury indicted Sushovan Hussain, former Chief Financial Officer of Autonomy Corporation plc (“Autonomy”), on federal conspiracy and wire fraud charges for perpetrating a massive accounting fraud that concealed the true performance of Autonomy’s business, financial condition, and prospects for growth. These charges relate to HP’s \$11.2 billion acquisition of Autonomy in October 2011, and allege many materially false statements made by Mr. Hussain and other members of Autonomy management in connection with the acquisition. The United States Attorney’s Office for the Northern District of California (“USAO”) has identified HP and related entities as victims of Mr. Hussain’s extensive fraud. Certification of Organizational Victim, ECF No. 20.

In May 2012, Mr. Hussain and other members of the Autonomy leadership team resigned from HP. In the wake of these departures, HP began an internal investigation, which resulted in discovering that it had been deceived by Mr. Hussain and other former members of Autonomy management. In late 2012, HP reported what it learned about the Autonomy fraud to the United States Securities and Exchange Commission (“SEC”) and the USAO. HP cooperated in the SEC’s and USAO’s parallel investigations of Autonomy’s accounting fraud.

Since then, HP has expended significant resources to respond to hundreds of requests from, and to produce millions of documents to, the government. These documents, as Mr. Hussain’s counsel has acknowledged, have been provided by the government to Mr. Hussain during the course of this criminal action.

But, rather than reviewing the materials that he already has in-hand, Mr. Hussain instead seeks to impose an additional and substantial burden on his victim by serving a Rule 17(c) subpoena for the production and cataloging of **73 requests and sub-requests** (collectively, the “Requests”). In addition to being overly broad and burdensome, the Requests are not permissible and fall well outside the limits of Federal Rule of Criminal Procedure Rule 17, as defined by the United States Supreme Court in *United States v. Nixon*, 418 U.S. 683 (1974), and other federal courts across the country – including this Court – in that:

- HP ***already produced documents*** responsive to 52 of the 73 Requests to the USAO and/or SEC and, therefore, Mr. Hussain either has or can readily procure those materials. See *United States v. Eden*, 659 F.2d 1376, 1381 (9th Cir. 1981); *United States v. Reyes*, 239 F.R.D. 591 (N.D. Cal. 2006).
- Twenty-five (25) Requests seek information that is ***irrelevant*** to the crimes charged in the indictment. See *Nixon*, 418 U.S. at 700; *United States v. Pac. Gas & Elec. Co.*, No. 14-cr-00175-THE-1 (MEJ), 2016 U.S. Dist. LEXIS 40587, at *7-8 (N.D. Cal. Mar. 28, 2016).
- At least 38 Requests seek evidence that is ***inadmissible***, either because it is presumptively hearsay or, in one instance, pertains to settlement discussions and is thus inadmissible pursuant to Federal Rule of Evidence 408. See *Nixon*, 418 U.S. at 701.
- Sixty-three (63) Requests ***fail the specificity standard*** demanded by the law governing Rule 17 subpoenas. *Id.* at 700.
- At least 8 Requests on their face seek information ***protected by the attorney-client privilege and/or attorney work-product doctrine***.¹ See *Reyes*, 239 F.R.D. at 598.
- Four (4) Requests seek ***statements of prospective trial witnesses***, which are explicitly prohibited by Rule 17(h).

In sum, Mr. Hussain’s Rule 17 subpoena is “unreasonable and oppressive” under the strict language of Rule 17 and well-settled case law. Accordingly, the Court should quash it.

II. BACKGROUND

A. HP Acquires Autonomy, Discovers And Reports A Significant Fraud

After acquiring Autonomy for more than \$11 billion, HP’s internal investigation revealed what HP viewed as significant accounting improprieties, disclosure failures, and other intentional misrepresentations perpetrated by Mr. Hussain and other members of Autonomy’s former

¹ To the extent other Requests implicitly seek privileged information, this same argument applies.

1 management. HP engaged outside counsel, Morgan, Lewis & Bockius LLP (“Morgan Lewis”), to
 2 lead its internal investigation, and Morgan Lewis retained PricewaterhouseCoopers LLP (“PwC”) as forensic accountants to assist with an investigation of Autonomy’s pre-acquisition accounting
 3 practices.
 4

5 On November 16, 2012, HP reported to the SEC what it had learned about Autonomy’s
 6 deception, and the SEC subsequently referred the matter to the USAO. Declaration of Susan D.
 7 Resley (“Resley Decl.”) ¶ 4. Thereafter, the SEC and the USAO commenced parallel
 8 investigations. *Id.* As might be expected of any fraud victim, HP cooperated – and continues to
 9 cooperate – with these governmental investigations.

10 HP has produced millions of documents to the government in the course of the SEC’s and
 11 USAO’s investigations. Resley Decl. ¶ 9. *First*, HP produced documents in response to two SEC
 12 subpoenas, which sought broad categories of documents from both HP and Autonomy. *Id.* at ¶ 5.
 13 *Second*, HP produced documents responsive to a Grand Jury subpoena. *Id.* at ¶ 6. *Third*, from
 14 2012 to present, HP has voluntarily produced materials in response to hundreds of informal
 15 requests from the SEC and/or USAO. *Id.* at ¶ 7. *Fourth*, HP produced to the USAO all
 16 documents disclosed to Mr. Hussain in connection with a separate civil action in the United
 17 Kingdom that certain HP group entities are pursuing against him and Autonomy’s former CEO,
 18 Michael Lynch. *Id.* at ¶ 8, Exh. 3. The government is in possession of all of these documents
 19 and, upon information and belief, has provided the documents to Mr. Hussain. *Id.* at ¶ 9.

20 **B. Federal Grand Jury Indicts Mr. Hussain On Fraud Charges**

21 On November 10, 2016, the Grand Jury in the Northern District of California returned an
 22 Indictment charging Mr. Hussain with conspiracy to commit wire fraud, in violation of 18 U.S.C.
 23 § 1349; wire fraud, in violation of 18 U.S.C. § 1343; and forfeiture counts. Indictment 6-12, ECF
 24 No. 1. On May 4, 2017, the Grand Jury returned a Superseding Indictment, adding charges under
 25 18 U.S.C. § 1348 (securities fraud) and 18 U.S.C. § 2 (aiding and abetting). The charges allege
 26 Mr. Hussain’s scheme to defraud HP and others:

27 In or about Autonomy’s first quarter 2009...defendant HUSSAIN,
 28 together with others, engaged in a fraudulent scheme to deceive
 purchasers and sellers of Autonomy securities about the true

performance of Autonomy's business, its financial condition, and its prospects for growth.

Superseding Indictment 5:6-9, ECF No. 52. The Superseding Indictment alleges that, in meeting with HP representatives in early 2011 about the potential acquisition of Autonomy, Mr. Hussain "used Autonomy's false and misleading statements from 2009, 2010, and 2011 to make Autonomy more attractive to a potential purchaser like HP." *Id.* at 5:16–19. According to the Indictment, Mr. Hussain used a "variety of means and methods" in furtherance of his scheme to defraud, including: artificially inflating revenues; making false and misleading statements to auditors, market analysts, and regulators; making or causing false entries in Autonomy's books and records; and causing others to engage in similar conduct. *Id.* at 5:20–6:22.

C. The Subpoena

HP has produced millions of documents to the government throughout the course of its investigation and Mr. Hussain's counsel has admitted that "[t]he government's production [of documents to counsel for Mr. Hussain] includes at least 10 million pages of documents produced by HP." Decl. of Kate E. Lazarus in Supp. of Def.'s Mot. to Compel Produc. of Doc. from Government's Investigatory File 1:18-19, ECF No. 75. Despite this, on July 19, 2017, Mr. Hussain served HP with a Rule 17 subpoena (the "Subpoena") containing 73 Requests. Resley Decl. ¶¶ 2-3, Exhs. 1-2. The Subpoena demands relate to various subjects, which can be organized into the following categories:

- HP's interest in, due diligence on, and acquisition of Autonomy and related matters. (Request Nos. 1–22)²
 - Included are requests for materials concerning HP's general acquisition strategy and acquisition policies and procedures unrelated to Autonomy, as well as HP's corporate structuring and tax treatment of the Autonomy transaction. (Nos. 2-4, 15-20).
- Certain hardware sales by Autonomy. (Request Nos. 23–29)
- HP's efforts to integrate Autonomy and other acquired companies. (Request Nos. 30, 39–40)

² For ease of reference HP has prepared a chart outlining the Requests and HP's objections. See Appendix A. All references to the Subpoena may be found at Resley Decl. ¶ 3, Exh. 2.

- HP's post-acquisition valuation of Autonomy, including its November 2012 write-down of the Autonomy asset and its calculation of Autonomy revenue which was improperly recognized. (Request Nos. 31–37, 38, 47)
- Whistleblower complaints. (Request No. 41)
- Summaries of interviews conducted by HP or its outside counsel. (Request Nos. 42–44)
- Drafts, reports and underlying analysis performed by PwC. (Request No. 45)
- Communications between HP and Autonomy's former auditor, Deloitte, including communications relating to settlement discussions between HP and Deloitte. (Request Nos. 46, 48–51)
- Communications between HP and other government agencies. (Request Nos. 52 and 53)

Hoping to resolve some of the issues with the Subpoena before presentation to this Court, HP initiated a meet-and-confer session with counsel for Mr. Hussain. This occurred on July 31, 2017, but thus far Mr. Hussain's counsel has been unwilling to withdraw or limit the scope of the Subpoena. Resley Decl. ¶ 12, Exh. 5.

III. ARGUMENT

A. Discovery Under Federal Rule of Criminal Procedure 17 Must be Narrowly Tailored

The Subpoena oversteps the limits of discovery permitted under Rule 17(c). Although Rule 17(c) provides that a party may compel a “witness to produce any books, papers, documents, data, or other objects,” *see* Fed. R. Crim. P. 17(c)(1), this Court has observed that it “is not as broad as its plain language suggests.” *Reyes*, 239 F.R.D. at 597. As the Supreme Court has made clear, Rule 17(c) subpoenas are “not intended to provide a means of discovery for criminal cases.” *Nixon*, 418 U.S. at 698; *see also Pac. Gas & Elec. Co.*, 2016 U.S. Dist. LEXIS 40587, at *7-8 (“a Rule 17(c) subpoena reaches only *evidentiary* materials – not all *discoverable* materials”) (emphasis in original). A proponent may not seek records “on the possibility that the events may not have happened as described” by witnesses or victims, or where he does not know if helpful information exists in the requested materials. *United States v. Johnson*, No. CR 94-0048 SBA, 2007 U.S. Dist. LEXIS 95834, at *10-11 (N.D. Cal. Dec. 24, 2007). Further, Rule 17(c) does not permit defendants to bypass the limitations of discovery provided by the government pursuant to Rule 16. *Id.* at *5 (internal citations omitted) (*citing Bowman Dairy Co.*

1 v. *United States*, 341 U.S. 214, 220 (1951)); *United States v. Rodriguez*, No. 2:11-0296 WBS,
 2 2016 WL 6440323, at *1 (E.D. Cal. Oct. 28, 2016) (“The discovery tools available to defendants
 3 in criminal cases are limited, and are to be found elsewhere in the Federal Rules of Criminal
 4 Procedure, not in Rule 17.”).

5 While Mr. Hussain’s Rule 17 subpoena reads like a civil discovery request, this is *not* civil
 6 discovery and Mr. Hussain may not engage in a fishing expedition by serving an overly broad
 7 Rule 17(c) subpoena on HP. *See United States v. Villa*, 503 F. App’x. 487, 489 (9th Cir. 2012)
 8 (quashing subpoena because “Rule 17(c) was not intended as a discovery device, or to allow a
 9 blind fishing expedition seeking unknown evidence”) (internal quotations omitted). To the
 10 contrary, as the proponent, Mr. Hussain must clear several hurdles in relation to the Subpoena.
 11 He must “demonstrate that the subpoenaed materials are not available from any other source.”
 12 *Eden*, 659 F.2d at 1381; *see also Reyes*, 239 F.R.D. at 598. In addition, Mr. Hussain must
 13 establish that each request: (1) is **relevant** to the crimes charged, (2) seeks **admissible** evidence,
 14 and (3) is **specific**. *Nixon*, 418 U.S. at 700. Mr. Hussain fails to meet his burden as to any of the
 15 Requests and, therefore, the Subpoena should be quashed.

16 Even if Mr. Hussain can satisfy all three prongs (which he cannot), he still may not seek
 17 materials protected by the attorney-client privilege or the attorney work product doctrine (*Reyes*,
 18 239 F.R.D. at 598), or statements of prospective trial witnesses (which are explicitly prohibited
 19 by Federal Rule of Criminal Procedure 17(h)).

20 **B. Mr. Hussain Seeks Documents That He Already Possesses**

21 The vast majority of the documents Mr. Hussain requests in the Subpoena are already in
 22 his possession or easily procured by him and, thus, not properly sought through a Rule 17(c)
 23 subpoena. As the Ninth Circuit has held, a subpoena proponent “must [] demonstrate that the
 24 subpoenaed materials are not available from any other source.” *Eden*, 659 F.2d at 1381
 25 (affirming the trial court’s conclusion that much of the requested material was otherwise
 26 procurable, or already in the possession of the subpoena proponent). Furthermore, this Court has
 27 observed that “a court [also] must consider whether the materials are otherwise procurable
 28 reasonably in advance of trial by exercise of due diligence [and] whether the proponent can

properly prepare for trial without such production and inspection in advance of trial....” *Reyes*, 239 F.R.D. at 598, citing *Nixon*, 418 U.S. at 699 (internal quotations omitted).

Mr. Hussain does not – and cannot – satisfy his burden for the simple reason that he already has access to most of the requested documents. Fifty-two of the 73 Requests are for materials that HP has produced to the USAO and/or SEC.³ Resley Decl. ¶ 3. Accordingly, Mr. Hussain likely already has received the majority, if not all, of these materials and can easily procure the remainder from the government. See *United States v. Schneider*, No. CR 02-0403 SI, 2003 U.S. Dist. LEXIS 27324, at *21 (N.D. Cal. Nov. 18, 2003) (quashing 17(c) subpoena where the proponent failed to show that the requested materials were “relevant, specific, and non-cumulative” because, *inter alia*, the proponent already possessed some items demanded by the subpoena); *United States v. Shabazz*, No. 97-183-FR, 1998 U.S. Dist. LEXIS 9826, at *5 (D. Or. June 10, 1998) (quashing subpoena because, *inter alia*, proponent defendant had not shown that requested documents were “not otherwise available from the United States Attorney's Office”).

C. The Subpoena Fails To Meet The *Nixon* Factors

Even if Mr. Hussain could demonstrate that he cannot reasonably procure the documents from the government, the Court still should quash the Subpoena because it fails to meet the three elements required of every Rule 17 subpoena request under *United States v. Nixon*: (1) relevancy; (2) admissibility; and (3) specificity. 418 U.S. at 700; see also *Reyes*, 239 F.R.D. at 598.

1. Mr. Hussain Seeks Documents That Are Not Relevant

A proponent of a Rule 17(c) subpoena may only request documents that have a “sufficient likelihood” of being “relevant to the offenses charged in the indictment.” *Nixon*, 418 U.S. at 700; *United States v. Roque*, No. CR 13-829 PA, 2014 U.S. Dist. LEXIS 197123 * (C.D. Cal. Aug. 18, 2014); *United States v. Salvagno*, 267 F. Supp. 2d 249, 253–54 (N.D.N.Y. 2003) (granting motion to quash subpoena because it requested “records pertaining to materials far beyond the scope of the Indictment”); *United States v. Shepard*, No. 4:09CR423 RWS DDN, 2010 WL

³ The documents HP has produced to the USAO and/or SEC correspond to the following: Requests 1-10, 12-14, 16, 20-22, 24, 25, 27-29, 31-38, 41, 43, 44, and 50-52 (including all sub-requests). Resley Decl. ¶ 3. Regarding Requests 43 and 44, while HP continues to produce factual, non-privileged witness summaries to the USAO, Rule 17(h) expressly prohibits subpoenaing witness statements. (See Section D.2 below.)

750110, at *2 (E.D. Mo. Feb. 26, 2010) (quashing subpoena because the documents sought were “not relevant to the criminal charges in the indictment”). The subpoena request may not be “based on solely a mere hope that some relevant material might turn up.” *Pac. Gas & Elec. Co.*, 2016 U.S. Dist. LEXIS 40587, *35 (internal quotations omitted) (rejecting subpoena request where proponent did not articulate “a clear sense of how it intends to ultimately use that information at trial”). It is “not enough [to] have some potential for relevance.” *Roque*, 2014 U.S. Dist. LEXIS 197123, at *5. Rather, the requesting party has a “duty to at least articulate how it believes the evidence sought to be evidentiary and relevant. Conclusory arguments as to relevance are not well received.” *Id.*; see also *United States v. Nguyen*, No. 13-cr-00295-RMW-1 (HRL), 2016 U.S. Dist. LEXIS 63673, *2 (N.D. Cal. May 13, 2016) (quashing subpoena because, *inter alia*, requests were irrelevant to the elements of the crime and therefore did not establish a proper “evidentiary purpose”).

Here, Mr. Hussain demands information entirely unrelated to the indicted offenses – classic examples of basing on the “mere hope that some relevant material might turn up” – including the following:

- HP’s merger and acquisition strategies, which are not specific to Autonomy (Request No. 4) – See, e.g., *Nguyen*, 2016 U.S. Dist. LEXIS 63673, at *2 (quashing subpoena requesting third party’s policies and procedures relating to the loan at issue in the case).
- HP’s corporate structure relating to the Autonomy transaction and HP’s tax treatment of the Autonomy acquisition (Request Nos. 15-19) – See *United States v. Stukenbrock*, No. 5:15-cr-00034-EJD-1 (HRL), 2016 U.S. Dist. LEXIS 171563, *1-2 (N.D. Cal. Dec. 9, 2016) (quashing subpoena requesting information about investment fraud victim’s financial information as irrelevant); *United States v. MacDonald*, No. 93-91-FR, 1993 U.S. Dist. LEXIS 13401, at *2-3 (D. Or. Sept. 22, 1993) (quashing requests for tax information where the proponent defendant failed to show relevance to the case).
- HP’s efforts to integrate Autonomy and other companies HP acquired (Request Nos. 30, 39-40) – See *Nguyen*, 2016 U.S. Dist. LEXIS 63673, at *2 (quashing subpoena requesting third party’s policies and procedures relating to the loan at issue in the case)
- HP’s post-acquisition valuations of Autonomy and its November 2012 write-down of the Autonomy asset (Request Nos. 31-33, 37, 38, 47) – See *United States v. Burke*, No. S-05-0365 FCD, 2009 U.S. Dist. LEXIS 90287, at *8 (E.D. Cal. Sept. 16, 2009) (denying request for issuance of Rule 17 subpoena where, among other concerns, “the time period requested for records far exceeds the relevant time period in the indictment”); *United States v. Mason*, No. CR 05-324-RE, 2008 U.S. Dist. LEXIS 34537, at *5 (D. Or. Apr. 25,

2008) (quashing subpoena for documents that pre-dated or post-dated the FBI's investigation of the defendant).

- Communications between HP and Deloitte or PwC (Request Nos. 45, 46, 48-51) – *See Pac. Gas & Elec. Co.*, 2016 U.S. Dist. LEXIS 40587, at *19 (quashing subpoena request where proponent did not make showing that documents sought would be relevant the case).
- Communications between HP and government agencies (Request Nos. 11, 52-53) – *See United States v. Carn*, No. 2:13-cr-00346-APG-GWF, 2016 U.S. Dist. LEXIS 3587, *5-6 (D. Nev. Jan. 11, 2016) (denying as overbroad requests seeking “information generally relating to the investigation which led to [the defendant’s] current charges”).

Because Mr. Hussain cannot demonstrate that these documents are relevant to the charges, the Court should quash these Requests.

2. Mr. Hussain Seeks Documents That Are Not Admissible

The subpoena proponent must make a “sufficient preliminary showing that . . . [the requested material] contains evidence admissible with respect to the offenses charged.” *Nixon*, 418 U.S. at 700. *Nixon*’s admissibility requirement “is governed by the Federal Rules of Evidence.” *United States v. Pac. Gas & Elec. Co.*, No. 14-cr-00175-THE, 2016 U.S. Dist. LEXIS 78798, at *6 (N.D. Cal June 16, 2016). As such, Mr. Hussain bears the burden of showing that the evidence he seeks will be admissible at trial for a purpose other than impeachment. *See Nixon*, 418 U.S. at 701 (“Generally, the need for evidence to impeach witnesses is insufficient to require its production in advance of trial.”); *United States v. Fields*, 663 F.2d 880, 881 (9th Cir. 1981) (“The only evidentiary use that defendants have been able to advance is that the statements and transcribed interviews of witnesses could be used for impeachment purposes. This use is generally insufficient to justify the pretrial production of documents.”); *United States v. Cervantes*, No. 12-cr-00792-YGR-12 (KAW), 2016 U.S. Dist. LEXIS 75486, *4 (N.D. Cal. June 9, 2016) (quashing subpoena seeking material related to a potential witness for impeachment purposes). The Subpoena here seeks inadmissible hearsay and settlement communications and, thus, fails this test.

a. Hearsay: Rule 802

Hearsay is presumptively inadmissible unless it falls within a specific exemption. Fed. R. Evid. 802. Accordingly, a proponent of a Rule 17(c) subpoena may not seek hearsay information.

1 *See, e.g., United States v. Collins*, No. 11-CR-00471-DLJ (PSG) 2013 U.S. Dist. LEXIS
 2 36361 *11-12 (N.D. Cal. Mar. 15, 2013) (quashing subpoena requests seeking inadmissible
 3 hearsay); *Reyes*, 239 F.R.D. at 600 (same). And, yet, that is exactly what Mr. Hussain has done.
 4 He seeks materials that are presumptively hearsay, including the following examples:

- 5 • Memoranda or statements made by HP personnel or third parties concerning the
 6 acquisition (Request Nos. 1, 2, 11, 12, 14) – *See Collins*, 2013 U.S. Dist. LEXIS 36361,
 7 at *8 (quashing subpoena requesting victim’s chat logs and “written and electronic mail
 8 and notes or memoranda” regarding events at issue in the case as presumptively
 9 inadmissible hearsay); *United States v. Sanchez*, No. CR S-05-0443 WBS, 2007 U.S. Dist.
 10 LEXIS 103945, *3 (E.D. Cal. Jan. 9, 2007) (denying authorization to issue 17(c) subpoena
 11 because, *inter alia*, “[w]itness interviews, memoranda, notes, reports, and the debriefings
 12 of third parties would clearly appear to be hearsay”).
- 13 • Post-acquisition communications among HP personnel (Request No. 25- 27, 29-30, 34-36,
 14 38) – *See id.*
- 15 • Notes, summaries, and interview memoranda created during an internal investigation
 16 (Request Nos. 42-44) – *See Reyes*, 239 F.R.D. at 600 (finding that 17(c) requests for
 17 summaries, notes, and memoranda related to interviews were inadmissible hearsay).
- 18 • Communications between HP and Deloitte or PwC (Request Nos. 45, 46, 48-51) – *See*
 19 *Collins*, 2013 U.S. Dist. LEXIS 36361, at *11; *Sanchez*, 2007 U.S. Dist. LEXIS 103945,
 20 at *3.
- 21 • Communications between HP and government agencies (Request Nos. 52 and 53) – *See*
 22 *Reyes*, 239 F.R.D. at 600 (finding that communications between subpoenaed entity and
 23 law enforcement were inadmissible hearsay).

24 To the extent that the Subpoena seeks inadmissible hearsay, the Court should quash it.

25 **b. Compromise Offers And Negotiations: Rule 408**

26 “[E]vidence of...conduct or a statement made during compromise negotiations” is
 27 generally inadmissible. Fed. R. Evid. 408(a)(2). The rationale behind this protection is twofold:
 28 “(1) the evidence of compromise is irrelevant, since the offer may be motivated by desire for
 peace rather than from any concession of weakness of position; [and] (2) a more consistently
 impressive ground is promotion of the public policy favoring the compromise and settlement of
 disputes.” *Hudspeth v. C.I.R.*, 914 F.2d 1207, 1213-14 (9th Cir. 1990) (citing Fed. R. Evid. 408
 advisory committee’s note). Even more fundamental is the recognition that “[s]ettlements
 ...would be inhibited if the [parties] would have to review whether a settlement could be binding

1 in subsequent cases.” *Id.* In short, “any communications made in furtherance of settlement are
 2 privileged.” *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 983 (6th
 3 Cir. 2003).

4 Nevertheless, in Request 48 of the Subpoena, Mr. Hussain demands “[a]ll
 5 communications regarding the Settlement Agreement between HP and Deloitte ... and the
 6 negotiation thereof” – i.e., precisely what is contemplated in Rule 408. In addition to being
 7 irrelevant and otherwise inadmissible as hearsay, Mr. Hussain clearly is seeking documents for
 8 the purpose of impeaching a trial witness – which is expressly forbidden by Rule 408.

9 3. The Requests Fail The “Specificity” Requirement

10 Each request made under a Rule 17(c) subpoena must be specific. *Nixon*, 418 U.S. at 700.
 11 The specificity requirement “is not satisfied if a defendant does not know what the evidence
 12 consists of or what it will show... Likewise, a defendant’s mere hope the documents will produce
 13 favorable evidence will not support the issuance of a subpoena.” *United States v. Aguilar*, No.
 14 CR 07-00030 SBA, 2008 U.S. Dist. LEXIS 63114, *18 (N.D. Cal. Aug. 1, 2008) (internal
 15 citations and quotations omitted) (denying authorization for 17(c) subpoena for information
 16 regarding two telephone numbers over a seven-month period because “vague and unspecific”);
 17 *see also Stukenbrock*, 2016 U.S. Dist. LEXIS 171563, at *6 (quashing subpoena issued “merely
 18 with the hope of finding something helpful”); *United States v. Phoenix*, No. 5:14-cr-00318-LHK,
 19 2015 U.S. Dist. LEXIS 141373, *7 (N.D. Cal. Oct. 15, 2015) (quashing subpoena where requests
 20 did not identify “particular documents from particular custodians,” but rather recited “broad
 21 categories of documents”).

22 Courts are particularly wary of requests for “any” or “all” documents of a certain type or
 23 category. As this Court observed:

24 A demand for any and all documents relating to several categories of
 25 subject matter rather than specific evidentiary items, suggests the
 26 subpoena’s proponent seeks to obtain information helpful to the defense by
 27 examining large quantities of documents, rather than to use Rule 17 for its
 28 intended purpose – to secure the production for a court proceeding of
 specific admissible evidence.

1 *Reyes*, 239 F.R.D. at 606 (internal quotations omitted); *see also Pac. Gas & Elec. Co.*, 2016 U.S.
 2 Dist. LEXIS 40587, at *16 (quashing requests for “complete personnel files” of named
 3 employees, “all payments to” those employees, and “all records and communications” regarding
 4 the retention of counsel for those employees); *United States v. Booth*, No. 2:08-cr-00283-RCJ-
 5 RJJ, 2011 U.S. Dist. LEXIS 142205, at *4 (D. Nev. Dec. 8, 2011) (“The best clue as to the intent
 6 to ‘fish’ is the repeated use of the words ‘any,’ ‘all,’ and ‘any and all.’”); *United States v. Zavala-*
 7 *Tapia*, No. CR-2:09-297 WBS, 2010 U.S. Dist. LEXIS 137645, *3 (E.D. Cal. Dec. 17, 2010) (“A
 8 subpoena signals a fishing expedition when it calls for ‘any materials’ regarding a particular
 9 subject and ‘any other information’ and defines ‘material information’ as ‘including’ but ‘not
 10 limited to’ the described information.”); *Aguilar*, 2008 U.S. Dist. LEXIS 63114, at *18 (“Courts
 11 will generally find the use of broad requests, such as for ‘all files’ or ‘all records’ pertaining to a
 12 given subject, not sufficiently specific.”).

13 With limited exception, the Requests in the Subpoena mirror the requests that courts in
 14 this district have repeatedly quashed. For instance, Mr. Hussain’s requests do not identify
 15 custodians or limit the time frame in which to search and thus, on their face, call for HP to review
 16 data from dozens of custodians over a number of years.⁴ In addition, 32 of the Requests demand
 17 “any” or “all” of a particular category of documents;⁵ and, while 31 others do not explicitly
 18 include the words “any” or “all,” the effect is the same, as they seek “records,” “documents,”
 19 “memoranda,” and “communications,”⁶ the expansive definitions for which span *fourteen* lines of
 20 the Subpoena Definitions. Resley Decl. ¶ 3, Exh. 2. These are precisely the types of “fishing
 21 expedition[s]” that Rule 17 prohibits.

22
 23 ⁴ Of the combined 57 requests identified above, only 11 (Request Nos. 4, 8, 9, 10, 12, 25, 28, 33-
 24 35, and 40) include any sort of a date restriction (though often only specifying an end date). Only
 25 two, Requests 25 and 36, identify any particular custodians at issue; and Request 25 explicitly
 26 includes as custodians all members of three distinct business units: (i) Mergers Acquisitions
 Divestitures and Outsourcing (MADO), (ii) External Financial Reporting (EFR), and (iii) Strategy
 and Corporate Development (SCD).

27 ⁵ Request Nos. 3-7, 9-12, 14, 15, 33, 34-38, 41-45, 48, 49, and 52 seek “any” or “all” of a
 particular category of documents.

28 ⁶ Thirty-one (31) requests fall in this category: Request Nos. 1, 2, 13, 16-19, 23-32, 39, 40, 46,
 50, 51, and 53.

D. The Court Should Quash The Subpoena On Additional Grounds

Even if Mr. Hussain met the *Nixon* factors – which he does not – the Court should quash the Subpoena because it (1) seeks material protected by the attorney-client privilege and attorney work product doctrine; (2) demands statements of prospective witnesses in prohibition of Rule 17; and (3) is unduly burdensome and oppressive.

1. Mr. Hussain Improperly Seeks Privileged Information

As this Court has ruled, “a Rule 17(c) subpoena should be quashed or modified if it calls for a privileged matter” – whether under the attorney-client privilege or the attorney work-product doctrine. *Reyes*, 239 F.R.D. at 598, citing 2 Federal Practice & Procedure § 275, at 258 (internal quotation omitted). Nevertheless, in at least eight of the Requests, Mr. Hussain demands privileged information.

a. The Subpoena Seeks Materials Subject To The Attorney-Client Privilege

Request Nos. 15, 17 and 18 seek memoranda and analysis concerning HP’s structuring and tax treatment of the Autonomy acquisition. Not only do these requests seek irrelevant and otherwise inadmissible information, they also implicate “communications made in confidence by a client to an attorney for the purpose of seeking professional legal advice,” *Reyes*, 239 F.R.D. at 598, and therefore elicit privileged materials. The ban on requesting privileged materials also extends to communications with third parties that were engaged to assist HP’s counsel in providing legal advice. *See Todd v. STAAR Surgical Co.*, No. CV-14-05263 MWF (RZX), 2015 WL 13388227, at *5 (C.D. Cal. Aug. 21, 2015) (It is “well-established that the attorney-client privilege may extend to communications with a third party where that third party has been retained as an agent for the purposes of assisting a lawyer in providing legal advice to a client.”). The Court should quash all requests for privileged information. *See, e.g., United States v. Tomison*, 969 F. Supp. 587, 595 (E.D. Cal. 1997) (quashing Rule 17(c) subpoena that called for the production of attorney-client privileged material).

b. The Subpoena Seeks Attorney Work Product

The attorney work product doctrine “protects from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation.” *In re Grand Jury*

1 *Subpoena*, 357 F.3d 900, 906-910 (9th Cir. 2004) (internal citations omitted) (immaterial whether
 2 or when litigation begins; if a document was prepared or obtained “because of the prospect of
 3 litigation,” then the attorney’s work product is protected from disclosure); *Hickman v. Taylor*,
 4 329 U.S. 495, 510 (1947) (work product doctrine safeguards “written statements, private
 5 memoranda and personal recollections prepared or formed by an adverse party’s counsel in the
 6 course of his legal duties”). Through the Subpoena, Mr. Hussain seeks privileged witness
 7 interview notes from HP and from two law firms representing HP (Request Nos. 42 - 44).
 8 Additionally, Mr. Hussain seeks reports from PwC that clearly constitute work product (Request
 9 Nos. 45(a) - (b)).⁷ Accordingly, the Subpoena should be quashed.

10 **i. Summaries of Interviews Conducted by HP Personnel**

11 Request No. 42 seeks “all summaries, notes and memoranda of any interviews conducted
 12 by HP personnel regarding its acquisition of Autonomy and Autonomy’s pre-acquisition
 13 accounting,” which is classic attorney work product, inasmuch as they were prepared in
 14 anticipation of litigation with Mr. Hussain and others. *See Upjohn Co. v. United States*, 449 U.S.
 15 383, 399-400 (1981) (“[F]orcing an attorney to disclose notes and memoranda of witnesses’ oral
 16 statements is particularly disfavored because it tends to reveal the attorney’s mental processes.”);
 17 *United States v. Nosal*, No. CR-08-0237 EMC, 2013 WL 1402336, at *2-3 (N.D. Cal. Apr. 5,
 18 2013) (denying motion to compel production of interview notes and memoranda responsive to
 19 Rule 17(c) subpoena because such documents are “protected as opinion work product”);
 20 *O’Connor v. Boeing N. Am., Inc.*, 216 F.R.D. 640, 643 (C.D. Cal. 2003) (“Notes and memoranda
 21 of an attorney, or an attorney’s agent, from a witness interview are opinion work product entitled
 22 to almost absolute immunity.”) (internal citations omitted). The Court should quash this Request.

23 **ii. Materials Prepared by Outside Counsel**

24 Morgan Lewis represented HP in connection with the government investigations, and
 25 Proskauer Rose represented a Special Committee of HP’s Board of Directors. In July 2013, in
 26 response to a request from the United Kingdom’s Serious Fraud Office (“SFO”), HP produced

27 ⁷ To the extent these requests also implicate communications made in confidence between HP and
 28 its counsel, or communications with third parties that were engaged to assist HP’s counsel in
 providing legal advice, they are further protected under the attorney-client privilege.

1 factual witness summaries prepared by Morgan Lewis. HP subsequently produced those
 2 summaries to the government. Resley Decl. ¶ 10. In March 2017, the USAO requested that HP
 3 produce “written summaries (and accompanying exhibits) of witness interviews” conducted by
 4 Morgan Lewis and Proskauer Rose “in connection with their investigations into pre-acquisition
 5 accounting irregularities at Autonomy Corporation plc.” The USAO made clear that it sought:

6 “only documents and materials that contain factual, non-privileged,
 7 information about what a witness may have said,” and that it was “not
 8 requesting documents or materials that contain or reflect content that is
 9 protected under the work product doctrine or attorney-client privilege or
 any other privilege belonging to HPE (or its predecessor HP); nor is the
 USAO asking for a waiver of any such protection or privilege etc.”

10 Resley Decl. ¶ 10, Exh. 4 (emphasis added). HP has produced (and continues to produce) these
 11 non-privileged documents to the USAO. Resley Decl. ¶ 10.

12 Mr. Hussain now demands in Request Nos. 43 and 44 “all summaries, notes and
 13 memoranda related to” interviews conducted by Morgan Lewis and Proskauer Rose. To the
 14 extent these Requests seek anything but factual summaries, they call for attorneys’ thoughts and
 15 impressions, which clearly is privileged information. *See Nosal*, 2013 WL 1402336 at *2-3. As
 16 such, there is no basis for requiring HP to produce them.

17 Moreover, HP’s production of factual witness summaries does not undermine the
 18 protections afforded under the attorney work product doctrine. *See In re Lithium Ion Batteries*
 19 *Antitrust Litig.*, No. 13-MD-02420 YGR, 2015 WL 1223972, at *3 (N.D. Cal. Mar. 17, 2015) (no
 20 waiver of attorney-client privileged communications or work product protection where the
 21 disclosed documents contained factual information and did not “contain or relay privileged
 22 communications or otherwise protected information”); *Century Aluminum Co. v. AGCS Marine*
 23 *Ins. Co.*, 285 F.R.D. 468, 471 (N.D. Cal. 2012) (no waiver where disclosed documents contain
 24 factual information and do not clearly reveal attorney-client communications).

25 iii. Materials Prepared By PwC

26 Request No. 45 seeks “all reports, memoranda, briefing notes, and documents prepared by
 27 PwC summarizing its investigation or analysis regarding HP’s acquisition of Autonomy and/or
 28 Autonomy’s pre-acquisition accounting.” These materials – prepared by PwC as forensic

1 accountants retained by Morgan Lewis (Resley Decl. ¶ 11) – are also attorney work product, to
 2 which Mr. Hussain is not entitled. *See In re Grand Jury Subpoena*, 357 F.3d at 907 (work
 3 product doctrine applies to documents created by a consultant working for an attorney, provided
 4 the documents were prepared or obtained because of the prospect of litigation).

5 HP's production to the USAO and SEC of PwC's March 6, 2013 "Interim Report" –
 6 prepared at the request of the SFO and containing an accounting analysis of certain transactions
 7 recorded in Autonomy's books and records (Resley Decl. ¶ 11) – does not mean that HP should
 8 be required to produce collateral documents, drafts, and/or underlying materials. *See SEC v.*
 9 *Berry*, No. C07-04431 RMW HRL, 2011 WL 825742, at *6 (N.D. Cal. Mar. 7, 2011) ("Most
 10 courts have held that, simply because a final product is disclosed to the public (or a third person),
 11 an underlying privilege attaching to drafts of the final product is not destroyed."); *SEC v.*
 12 *Schroeder*, No. C07-03798 JW HRL, 2009 WL 1125579, at *7 (N.D. Cal. Apr. 27, 2009)
 13 (production of a final memorandum to the SEC did not waive privilege as to attorney-prepared
 14 interview notes and drafts of the same memorandum). Simply put, Mr. Hussain is not entitled to
 15 any materials beyond those that have already been produced to the government.

16 **2. Mr. Hussain Improperly Seeks Witness Statements**

17 "No party may subpoena a statement of a witness or of a prospective witness under this
 18 rule." Fed. R. Crim. P. 17(h); *see also Johnson*, 2014 U.S. Dist. LEXIS 159788 at *6-7 ("Rule
 19 17(c) subpoenas may not be used to obtain the statement of a witness or of a prospective witness
 20 before they have testified, also known as Jencks Act materials.") (internal quotations omitted).
 21 Contrary to Rule 17(h), Mr. Hussain seeks via Request Nos. 42 through 44 evidence of statements
 22 witnesses made in interviews conducted as part of HP's internal investigation.⁸

23 **3. Mr. Hussain Seeks To Impose An Unreasonable And Oppressive Burden** 24 **On A Non-Party Victim**

25 "[T]he court may quash or modify the subpoena if compliance would be unreasonable or
 26 oppressive." Fed. R. Crim. P. 17(c)(2). This is squarely applicable here – HP has already
 27

28 ⁸ Similarly, to the extent that Request No. 49 seeks transcripts, it also impermissibly seeks statements of potential witnesses.

1 produced to the government millions of documents, which have in turn been produced to Mr.
 2 Hussain. Yet, rather than reviewing these materials himself, Mr. Hussain now demands that HP
 3 do the job of his counsel. Resley Decl. ¶ 3, Exh. 2, Instruction No. 2 of Subpoena (“If responsive
 4 documents have already been produced...identify such documents by Bates number.”) This is
 5 patently unreasonable and burdensome. *Phoenix*, 2015 U.S. Dist. LEXIS 141373, at *8-9 (where
 6 recipient would need to review 190,000 emails and other materials, which “would require
 7 hundreds of hours and substantial cost,” court found that the burden on third party Rule 17
 8 subpoena recipient would be “undue, especially in the short period of time provided”). *See also*
 9 *Rodriguez*, 2016 WL 6440323, at *2 (quashing subpoena as unreasonable and oppressive where,
 10 *inter alia*, “[c]omplying with the subpoena would require the movant to review terabytes of
 11 electronic data, a lengthy and extremely costly process”). The law is well-settled: the burden that
 12 Mr. Hussain seeks to place on HP is impermissible. The subpoena should be quashed.

13 IV. CONCLUSION

14 The Subpoena here is “unreasonable or oppressive” within the meaning of Rule 17(c)(2)
 15 and the case law, including squarely applicable decisions issued by the U.S. Supreme Court and
 16 this Court. Accordingly, HP respectfully requests that the Court grant its motion to quash the
 17 Subpoena. In the event that the Court orders HP to produce certain categories of documents, HP
 18 respectfully requests that the Court and parties to the case amend the Court’s January 18, 2017
 19 Amended Protective Order to include those documents as “Protected Materials,” including those
 20 documents responsive to Request Nos. 42–45 and 48–49.

1 Dated: August 9, 2017

Respectfully submitted,

2
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APPENDIX A

**TO NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA
ISSUED TO NON-PARTY HEWLETT-PACKARD COMPANY
PURSUANT TO RULE 17(C); MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

APPENDIX A

Req. No.	Request	Previously Produced by HP	Not Relevant	Not Admissible	Not Specific	Privileged And/Or Work Product	Statement Of A Potential Witness
1	Memoranda prepared by Leo Apotheker or Margaret Whitman setting out their executive vision for HP, including the document Mr. Apotheker described to the Department of Justice as a "vision paper" that he wrote in September 2010 to explain to the HP Board what he thought needed to be done at Hewlett-Packard.	X		X	X		
2	Memoranda prepared by Leo Apotheker, Shane Robison, or other HP executives, setting out strategic rationale(s) for HP's proposed acquisitions of Vertica, Tibco, and/or Autonomy.	X		X	X		
3	All documents related to Leo Apotheker's November 2010 presentation to the Board, in which he explained that HP "had to expand 'into new technologies that may today and in the future be outside of HP's core competencies,' as described on page 29 of the Hewlett-Packard Company Independent Committee's Resolution Regarding Derivative Claims and Demands, dated January 10, 2014 (the "IC Resolution").	X			X		
4	All internal HP policy manuals or memoranda governing mergers and acquisitions for the period from January up to and including October 2011.	X	X		X		
5	All documents from any "preliminary due diligence" report compiled by HP, as described at page 27 of the IC Resolution.	X			X		
6	All documents prepared for the "preliminary business case" supporting HP's acquisition of Autonomy, including the "detailed financial analysis of the target" and any supporting "published financial information, analyst reports, information obtained from the target and business-expert assumptions, and estimates," as described at page 28 of the IC Resolution.	X			X		
7	All reports or presentations prepared by HP's investment bankers, who allegedly did a 'deep dive' on Autonomy and on other potential targets that would add software breadth to HP's platform," as described on page 30 of the IC Resolution.	X			X		
8	All minutes of all Board of Directors meetings or related committee meetings before or during 2011 that relate to the proposed Autonomy acquisition, including but not limited to:	X					

MPA ISO MOT. TO QUASH SUBPOENA, APPENDIX A
Case No. 3:16-cr-00462 (CRB)

APPENDIX A

Req. No.	Request	Previously Produced by HP	Not Relevant	Not Admissible	Not Specific	Privileged And/Or Work Product	Statement Of A Potential Witness
8_A	The March 23, 2011 presentation to the Technology Committee.	X					
8_B	The May 2011 presentation to the Board of the "preliminary business case" for the proposed acquisition, which "restated the business, technology and product rationale" therefor.	X					
8_C	The July 19-21 Board meeting at which Leo Apotheker presented "the rationale for acquiring Autonomy" and described the acquisition as a "transformational opportunity," as set out on page 29 of the IC Resolution	X					
8_D	The August 5, August 12, and August 16 "presentations that the Board received from its advisors or management," as described at page 34 of the IC Resolution.	X					
8_E	The August 16 Board meeting, including any discussion related to Ms. Lesjak's, Mr. Holston's, and/or Mr. Lane's concerns about the proposed acquisition.	X					
8_F	The August 17 Board meeting, including any discussion related to "the opposition/concerns expressed at the August 16 meeting by HP's CFO Lesjak," as described at page 34 of the IC Resolution.	X					
9	Copies of all presentations made to the Board of Directors and any related committees about the potential acquisition of Autonomy (at any time before or during 2011), including but not limited to those meetings set out in Request 8 above.	X			X		
10	All communications or other documents related to, or contemplating, HP's efforts to cancel or back out of the Autonomy acquisition between July 1, 2011 and October 31, 2011.	X			X		
11	All communications between HP or its representatives and anyone from the U.K. Takeover Panel related to U.K. takeover rules and/or the Autonomy acquisition.		X	X	X		
12	All notes, memoranda, minutes and IM chat messages that were taken, prepared, sent or received by HP personnel related to daily due diligence calls with Autonomy in August 2011.	X		X	X		

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13	Records showing which HP personnel accessed or downloaded particular documents in the electronic deal (or data) room, including the identity of the personnel, the identity of the document(s), and the date and time such documents were accessed or downloaded.	X			X		
14	All communications sent or received by HP personnel that attached or discussed	X		X	X		
14_A	KPMG's August 9, 2011 "Protect Tesla — Due diligence assistance" report,	X		X	X		
14_B	KPMG's October 24, 2011 "Autonomy — closing balance sheet" presentation, and/or	X		X	X		
14_C	KPMG's January 26, 2012 "Autonomy — closing balance sheet" presentation."	X		X	X		
15	Any HP communications or memoranda explaining how and/or why HP structured the Autonomy acquisition through H.P. Vision ("Bidco"), and how and/or why ownership of Autonomy was passed from Bidco to other HP entities.		X		X	X	
16	Documents or internal organization charts sufficient to understand the corporate structure of HP, the various HP entities that lie between HP and Bidco, any other HP entity that has an ownership interest in Autonomy, and the country of incorporation of such entities.	X	X		X		
17	HP memoranda explaining the tax treatment of the Autonomy acquisition.		X		X	X	
18	HP memoranda explaining the potential tax implications for HP and Bidco of proposed valuation adjustments and/or the proposed or actual write-down of Autonomy.		X		X	X	
19	Communications between HP and Her Majesty's Revenue & Customs (HMRC) related to the tax treatment of the Autonomy acquisition and/or HP's efforts to reclaim tax as a result of the writedown.		X		X		
20	All emails from Morgan, Lewis & Bockius LLP ("MLB") to HP, Drinker Biddle or Freshfields forwarding an Excel spreadsheet entitled "2010 Revenue Matrix*" (where * is a wildcard that represents any character or combination of characters), or the content thereof.	X					

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21	All emails from MLB to HP, Drinker Biddle or Freshfields forwarding an Excel spreadsheet entitled "2009 Revenue Matrix*" (where * is a wildcard that represents any character or combination of characters), or the content thereof.	X					
22	All emails from MLB to HP, Drinker Biddle or Freshfields forwarding an Excel spreadsheet entitled "2008 Revenue Matrix*" (where * is a wildcard that represents any character or combination of characters), or the content thereof.	X					
23	Final invoices, contracts or agreements, and correspondence (including internal HP correspondence) related to each of the transactions identified in Exhibit 1 , to the extent those documents have not previously been produced to the government.				X		
24	Final invoices, contracts or agreements entered into before October 3, 2011 (as well as any related correspondence) for sales of HP hardware by HP (a) to Autonomy for resale to Autonomy's customers, (b) directly to Autonomy's customers as part of a deal that went through Autonomy, or (c) to resellers—including but not limited to Insight, DTP, or CDW—in relation to any Autonomy deal, to the extent those agreements are not identified in Exhibit 1.	X			X		
25	Internal emails, memoranda, 1M chat messages, or proposed questions drafted, sent, or received by members of HP's (i) Mergers Acquisitions Divestitures and Outsourcing (MADO) unit, (ii) External Financial Reporting (EFR) unit, or (iii) Strategy and Corporate Development (SCD) unit, during the period from July 19, 2011 to October 3, 2011, that referred to Autonomy's hardware revenues or hardware sales.	X		X	X		
26	Internal emails or memoranda setting out David Duckworth's process for mapping Autonomy's hardware sales onto HP's "product" account.			X	X		
27	Internal emails, memoranda, IM chat messages, or minutes of any meetings discussing the substance of:	X		X	X		

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27_A	Rebecca Norris's November 4, 2011 email, which noted that Autonomy "had about \$100 million in hardware revenue," and/or any related memoranda ("of [Ernst & Young's] review [of Deloitte's workpapers] and key areas of focus").	X		X	X		
27_B	Brian Outland's November 9, 2011 email, which noted that "there was approximately \$100M of hardware revenue and some of it was sold at a loss".	X		X	X		
27_C	Kathryn Harvey's November 15, 2011 email, which referred to "approx \$100M/	X		X	X		
27_D	Manish Sarin's November 15, 2011 email, which referred to "sell-through revenue where [Autonomy is] getting a margin as they sell Dell appliances".	X		X	X		
27_E	Hardware-related agenda items in Rachel Scott's November 11, 2011 "EY Close Meeting" email; and/or	X		X	X		
27_F	EY work papers discussing approximately \$30 million in hardware sales in the first and second quarters of 2012.	X		X	X		
28	Contracts or agreements that include sales of hardware by HP Autonomy after October 3, 2011, including but not limited to the agreement described in Request 29 below.	X			X		
29	HP emails or memoranda regarding HP's decision to recognize \$6.0 million in revenue on a Q112 deal with Citi and/or Ernst & Young's disagreement with HP's decision, as identified in the document Bates-stamped HP-SEC-00854952.	X		X	X		
30	HP emails or memoranda regarding HP's efforts to integrate Autonomy and to capitalize on predicted synergies, including but not limited to documents showing that:		X	X	X		
30_A	HP executives delayed the planned integration of: (i) HP's Information Management division and the Autonomy division; and/or (ii) Autonomy's IDOL technology and HP's structured-data solution, Vertica;		X	X	X		
30_B	HP continued to favor the sales of HP products over Autonomy products, HP's business units and sales people were not given commission or credit (towards sales quotas or bonus thresholds) for selling Autonomy products, and HP's sales people disrupted Autonomy sales by offering discounts on other (HP and thirdparty) products instead;		X	X	X		

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30_C	HP's Enterprise, Storage, Servers and Networking (ESSN) division refused to certify Autonomy on its hardware; and		X	X	X		
30_D	HP would not allow Autonomy staff to enter HP facilities after the acquisition.		X	X	X		
31	Spreadsheets or memoranda summarizing HP's rebasing exercise, including any interim or final assessments of the amount of Autonomy revenue that was allegedly improperly recognized or categorized.	X	X		X		
32	HP's August 2012 valuation model discussed by Meeta Sundervala and Andy Johnson on August 16, 2012, the output of which valued Autonomy at approximately \$13.7 billion, and any models, communications or presentations explaining how HP calculated that valuation.	X	X		X		
33	All presentations to, and related documents, memoranda, or minutes describing meetings held by, the HP Board about HP's rebasing exercise, HP's (or its advisors') adjusted valuations of Autonomy, and/or the proposed or final writedown, including presentations made to the Board on or between July 17, 2012 and November 16, 2012.	X	X		X		
34	Any communications sent or received by Margaret Whitman prior to November 20, 2012 related to any allegations of accounting improprieties at Autonomy.	X		X	X		
35	Any communications sent or received by Catherine Lesjak prior to November 20, 2012 related to any allegations of accounting improprieties at Autonomy, including any email instructions sent or received in October 2012 about calculation new valuations (and/or the "new base case" for) Autonomy.	X		X	X		
36	Any communications sent or received by Catherine Lesjak, Marc Levine, Henry Gomez, Howard Clabo, and/or the Edelman communications firm about whether HP had any support for its allegations regarding accounting improprieties at Autonomy, including but not limited to correspondence related to:	X		X	X		
36_A	Requests to "explain" \$5 Billion" in November 2012;	X		X	X		
36_B	Catherine Lesjak's November 30, 2012 questions about "the dcf analysis ... on the impact of the accounting irregularities and misrepresentations";	X		X	X		

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36_C	Marc Levine's November 30, 2012 acknowledgement that HP "never formally prepared anything to attribute the [alleged accounting] irregularities to the amount of the write down".	X		X	X		
36_D	Rob Binns's December 5, 2012 email noting that it was "disingenuous ... not to talk about the delayed synergies at all", and/or	X		X	X		
36_E	Ernst & Young's refusal to support HP's proposed attribution of "a majority of the writedown to fraud."	X		X	X		
37	Any work papers that HP and/or Duff & Phelps prepared for EY related to the purchase price allocation, and any notes, communications, and or HP memoranda related to EY's audit of such work papers.	X	X		X		
38	Any communications EY about the writedown of Autonomy, including but not limited to HP's explanations of the writedown and/or EY's refusal to support HP's proposed attribution of "a majority of the writedown to fraud."	X	X	X	X		
39	Internal presentations or memoranda related to HP's failure to integrate or synergize other major acquisitions, including Compaq, Palm, and EDS ("Other Acquisitions").		X		X		
40	Internal presentations or "scorecard decks" related to HP's Other Acquisitions' failure to meet targets, including but not limited to David Duckworth's "scorecards," financial presentations and forecasts for the 2011 and 2012 financial years.		X		X		
41	Any whistleblower complaints, or notes about whistleblower complaints, received by HP about: Autonomy; Autonomy's accounting practices; HP's integration of Autonomy; or HP's public disclosures about Autonomy, the acquisition and integration, or the writedown.	X			X		
42	All summaries, notes, and memoranda of any interviews conducted by HP personnel regarding its acquisition of Autonomy and Autonomy's pre-acquisition accounting.			X	X	X	X
43	All summaries, notes and memoranda related to the interviews of approximately 90 individuals conducted by Proskauer Rose LLP in connection with its investigation regarding HP's acquisition of Autonomy as described in the Hewlett-Packard Company Independent Committee's Resolution Regarding Derivative Claims and Demands ("IC Resolution").	X		X	X	X	X

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44	All summaries, notes and memoranda related to interviews conducted or attended by Morgan, Lewis & Bockius LLP in connection with its investigation regarding HP's acquisition of Autonomy and/or Autonomy's pre-acquisition accounting.	X		X	X	X	X
45	All reports, memoranda, briefing notes, and documents prepared by PwC summarizing its investigation or analysis regarding HP's acquisition of Autonomy and/or Autonomy's pre-acquisition accounting, including but not limited to:		X	X	X	X	
45_A	All reports, memoranda, briefing notes, and documents related to PwC's March 6, 2013 Interim Report; and		X	X	X	X	
45_B	All reports, memoranda, briefing notes, and documents related to work done pursuant to instructions received by PwC in October 2011 to conduct further investigative work.		X	X	X	X	
46	Notes or memoranda from meetings or calls between HP and/or its advisors and Deloitte personnel related to the results of PwC's report, HP's rebasing exercise, and/or the restated Autonomy Corporation Limited ("ACL") and Autonomy Systems Limited ("ASL") financial statements.		X	X	X		
47	The "external valuation prepared in July 2012" that calculated an impairment charge of £237 million, as described in the 2011 ACL financial statements, and any correspondence, notes, or internal HP memoranda related thereto.		X				
48	All communications regarding the Settlement Agreement between HP and Deloitte executed in or about April 2016 (the "Settlement Agreement"), and the negotiation thereof, including all communications with Deloitte and/or the United States Attorney's Office for the Northern District of California.		X	X	X		
49	All documents and communications regarding any HP meetings with Deloitte since the execution of the Settlement Agreement, including any communications between HP and Deloitte about potential cooperation; any emails or documents exchanged between HP and Deloitte for discussion purposes; and any notes, summaries, or transcripts of meetings between HP and Deloitte.		X	X	X		X

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50	Documents and communications related to a meeting between Chris Yelland of HP, other HP representatives, and members of Deloitte's Autonomy audit team in the summer 2012 regarding Autonomy's accounts.	X	X	X	X		
51	Documents and communications related to a meeting between representative of HP's legal department and the Head of Deloitte's Risk Group and any subsequent phone conversations between Chris Yelland of HP and Nigel Mercer of Deloitte regarding Autonomy's accounts and the termination of Deloitte's as Autonomy's auditors.	X	X	X	X		
52	Any correspondence between HP and the United States Air Force, including but not limited to any show-cause letters or responses thereto.	X	X	X	X		
53	Correspondence between HP or its representatives and the U.K. Serious Fraud Office related to HP's allegations about Autonomy and/or the SFO's investigation into Autonomy's pre-acquisition accounting.		X	X	X		